

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN THE MATTER OF THE SEARCH OF:

INFORMATION ASSOCIATED WITH:
TWO SMUGMUG/FLICKR ACCOUNTS
THAT IS STORED AT PREMISES
CONTROLLED BY SMUGMUG/FLICKR:
SCREEN/USER NAME 141788631@N08 AND
SCREEN/USER NAME 143587696@N02.

Magistrate No. 18-1474M

[UNDER SEAL]

APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT

I, Gregg Frankhouser, a Special Agent (SA) with Federal Bureau of Investigation (FBI),
being duly sworn, depose and state as follows:

INTRODUCTION

1. I make this affidavit in support of an application for a search warrant for information associated with certain accounts that is stored at a premises owned, maintained, controlled, or operated by SmugMug, Inc. (SmugMug), headquartered at 67 E. Evelyn Avenue, Suite 200, Mountain View, CA 94041. The information to be searched is described in the following paragraphs and in Attachment A. This affidavit is made in support of an application for a search warrant under 18 U.S.C. §§ 2703(a), 2703(b)(1)(A) and 2703(c)(1)(A) to require SmugMug to disclose to the government records and other information in its possession pertaining to the subscriber or customer associated with the accounts, including the contents of communications.

2. I am a Special Agent (SA) with the Federal Bureau of Investigation (FBI), assigned to the Pittsburgh, Pennsylvania office. I have been employed as a Special Agent for the FBI since April 2002. As part of my duties, I investigate violations of federal law, including the online exploitation of children, and including violations pertaining to the illegal possession, receipt,

transmission, and production of material depicting the sexual exploitation of minors in violation of Title 18, United States Code, Sections 2252(a)(2), 2252(a)(4)(B), and 2251. I know that Title 18, United States Code, Section 2251 makes it a crime to produce material depicting the sexual exploitation of a minor (child pornography) and that Section 2252(a)(4)(B), makes it a crime to possess child pornography. I know that Title 18, United States Code, Section 2252(a)(2), makes it a crime to receive or distribute material depicting the sexual exploitation of a minor. I have gained expertise in the conduct of such investigations through training in the area of child pornography and child exploitation investigations in seminars, classes, and everyday work related to conducting these types of investigations, and I have had the opportunity to observe and review numerous examples of child pornography in a variety of media, including computer media. I have obtained FBI Basic and Advanced Crimes against Children Training. I have participated in the execution of numerous federal and state search warrants which have involved child sexual exploitation and/or child pornography offenses.

3. I have been formally trained in the investigation of crimes involving the sexual exploitation of children. I have conducted numerous searches and forensic reviews of computers, cellular communications devices and other digital storage devices. I have formal training on conducting computer based investigations.

4. The facts in this affidavit come from my personal observations, my training and experience, and information obtained from other agents and witnesses. This affidavit is intended to show merely that there is sufficient probable cause for the requested warrant and does not set forth all of my knowledge about this matter.

5. Based on my training and experience and the facts as set forth in this affidavit, there is probable cause to believe that MICHAEL MORAN has committed violations of Title 18, United States Code, Section 2252(a)(2), which makes it a crime to receive and distribute material depicting the sexual exploitation of a minor; Title 18, United States Code, Section 2252(a)(4)(B), which makes it a crime to possess material depicting the sexual exploitation of a minor and access with intent to view it; and Title 18, United States Code, Section 2251, which makes it a crime to produce material depicting the sexual exploitation of a minor (child pornography). There is also probable cause to search the information described in Attachment A for evidence of these crimes, as described in Attachment B.

JURISDICTION

6. This Court has jurisdiction to issue the requested warrant because it is “a court of competent jurisdiction” as defined by 18 U.S.C. § 2711. 18 U.S.C. §§ 2703(a), (b)(1)(A), & (c)(1)(A). Specifically, the Court is “a district court of the United States that has jurisdiction over the offense being investigated.” 18 U.S.C. § 2711(3)(A)(i).

DEFINITIONS

7. Through my experience and training, I am aware that Title 18, United States Code, Section 2256 defines “minor,” for purposes of Section 2252, as “any person under the age of eighteen years.” Section 2256 also defines “sexually explicit conduct” for purposes of these sections as including: (a) genital-genital, oral-genital, anal-genital, and oral-anal sexual intercourse, whether between persons of the same or opposite sex; (b) bestiality; (c) masturbation; (d) sadistic or masochistic abuse; or (e) lascivious exhibition of the genitals or pubic area of any person.

8. The following definitions apply to this affidavit and Attachment B to this affidavit:

a. “Visual depictions” include undeveloped film and videotape, and data stored on computer disk or by electronic means, which is capable of conversion into a visual image.

See 18 U.S.C. § 2256(5).

b. “Minor” means any person under the age of eighteen years. See 18 U.S.C. § 2256(1).

c. “Sexually explicit conduct” means actual or simulated (a) sexual intercourse, including genital-genital, oral-genital, or oral-anal, whether between persons of the same or opposite sex; (b) bestiality; (c) masturbation; (d) sadistic or masochistic abuse; or (e) lascivious exhibition of the genitals or pubic area of any person. See 18 U.S.C. § 2256(2).

BACKGROUND ABOUT FLICKR

9. Flickr (now owned by SmugMug) is an online photo management and sharing application where users upload photos for others to see. Users create a free account and upload their own photos and videos to share with others. Flickr’s website, www.flickr.com, includes the following message about one of Flickr’s two main goals: “We want to help people make their photos available to the people who matter to them. To do this, we want to get photos and videos into and out of the system in as many ways as we can: from the web, from mobile devices, from the users’ home computers and from whatever software they are using to manage their content.”

10. According to Flickr’s Privacy Policy, located at <https://www.flickr.com/help/privacy/>, SmugMug, the owner and operator of Flickr since May 29, 2018, automatically collects information when individuals access or use Flickr, including: Log Information (including “the type of browser you use, access times, pages viewed, your IP address and the page you visited before navigating to our Services”); Device Information: (“We collect

information about the computer or mobile device you use to access our Services, including the hardware model, operating system and version, screen resolution, color and depth, device identifiers and mobile network information”); Location Information: (“With your consent, we may collect information about the location of your device. For example, we use your location information to provide you with the option to add POI data to your photo”); Photo Location Information: (“When you upload a photo with geographical data (i.e. from a mobile device) or manually geotag your photo, we collect the location of that photo. With your consent, we collect information about your location if you take a photo within the Flickr mobile application to add to your photo’s metadata”); EXIF Data: (“Exchangeable Image File Format (“EXIF”) data is a record of the settings and other relevant metadata inserted by a digital camera when you take a photo or video such as camera type, aperture, shutter speed, focal length, and location, among other information. Unless you turn off EXIF data on your camera or device or remove it from the picture before uploading to Flickr, Flickr receives and stores EXIF data”).

11. Providers typically retain certain transactional information about the creation and use of each account on their systems. This information can include the date on which the account was created, the length of service, records of log-in (i.e., session) times and durations, the types of service utilized, the status of the account (including whether the account is inactive or closed), the methods used to connect to the account, and other log files that reflect usage of the account. In addition, providers often have records of the Internet Protocol address (“IP address”) used to register the account and the IP addresses associated with particular logins to the account. Because every device that connects to the Internet must use an IP address, IP address information can help to identify which computers or other devices were used to access the account.

12. In some cases, account users will communicate directly with a provider about issues relating to their account, such as technical problems, billing inquiries, or complaints from other users. Providers typically retain records about such communications, including records of contacts between the user and the provider's support services, as well records of any actions taken by the provider or user as a result of the communications.

13. Information stored in connection with accounts may provide crucial evidence of the "who, what, why, when, where, and how" of the criminal conduct under investigation, thus enabling the United States to establish and prove each element or alternatively, to exclude the innocent from further suspicion. In my training and experience, a user's account information, associated IP logs, stored electronic communications, and other data can indicate who has used or controlled the account. This "user attribution" evidence is analogous to the search for "indicia of occupancy" while executing a search warrant at a residence. For example, profile information, communications, connection logs, and uploaded photos (and the data associated with the foregoing, such as date and time) may be evidence of who used or controlled the account at a relevant time. Further, account activity can show how and when the account was accessed or used. For example, as described herein, providers often log the Internet Protocol (IP) addresses from which users access their accounts along with the time and date. By determining the physical location associated with the logged IP addresses, investigators can understand the chronological and geographic context of the account access and use relating to the crime under investigation. This geographic and timeline information may tend to either inculcate or exculpate the account owner. Last, account activity may provide relevant insight into the account owner's state of mind as it relates to the offense under investigation. For example, information within the account may indicate the owner's motive and

intent to commit a crime (e.g., information indicating a plan to commit a crime), or consciousness of guilt (e.g., deleting account information in an effort to conceal them from law enforcement).

PROBABLE CAUSE

14. On or about September 18, 2018, Allegheny County Police Detective and Western Pennsylvania Violent Crimes Against Children Task Force (WPAVCACTF) member Steven Dish received information from the National Center for Missing and Exploited Children (NCMEC) that a Comcast Internet Protocol (IP) address uploaded multiple images of child pornography to SmugMug/Flickr online storage. NCMEC CyberTip 38782216 indicated that on August 17, 2018, screen name 141788631@N08, email address moranmchl@gmail.com uploaded over 200 images of apparent child pornography to SmugMug/Flickr, www.flickr.com from IP address 73.236.215.13. A public search of that IP indicates that the IP address is issued from Comcast IP Services, LLC, Mount Laurel, NJ.

15. On November 6, 2018, a preservation request was made to SmugMug/Flicker at lawenforcement@smugmug.com for user accounts 141788631@N08 and 143587696@N02. The request was confirmed by a representative of SmugMug/Flicker on November 11, 2018.

16. An online review indicates that SmugMug is a paid image sharing, image hosting service and online video platform on which users can upload photos and videos. SmugMug also facilitates the sale of digital and print media for amateur and professional photographers. SmugMug is a paid for service that in April 2018 purchased Flickr, another online storage platform. SmugMug/Flicker reports in the CyberTip that the primary identifier for Flickr is the NSID (screen name), which is a series of numbers followed by the "@" sign (e.g. 123456789@N02). If the

reported user's account has an email address, it will be included in the email address field. If there is no email address on the account, then "n/a" will be populated in this field.

17. Due to the number of images uploaded to the online storage, Pittsburgh FBI initiated a federal investigation on September 21, 2018. Your affiant reviewed the CyberTip and images and determined that a number of the images involved the sexual exploitation of minors. A large number of the images involved males under the age of ten years old and the focus of the images was on the genitals of the minors. Some of the images involved children under the age of five years old. A description of two of the images are described as follows:

A. FILENAME: img.24-1.jpg

B. DESCRIPTION: This image involves an infant male laying on his back and nude from the waist down. The child's chest and head cannot be seen in the image. The focus of the image is from the waist down. The image is focused on the child's penis while the child is urinating.

A. FILENAME: img.7-1.jpg

B. DESCRIPTION: This image involves an approximately three or four-year-old male standing totally nude in an outside area. The child is alone in the image with his penis exposed to the camera.

18. On September 21, 2018, an administrative subpoena was issued by the FBI to Comcast Communications, LLC for the IP address 73.236.215.13. The results were received on September 24, 2018, indicating that the person holding the IP address on August 17, 2018 was MICHAEL MORAN. Comcast provided the following information: Subscriber – MICHAEL MORAN, Subscriber address 6447 Library Road, Apartment 2, South Park, PA 15129, telephone number 412-580-4802, Comcast account number 8993208800219553. The Comcast account status

is active and the email address associated with the Comcast account is michaelmoran6447@comcast.net.

19. On September 24, 2018, your affiant conducted a check of Pennsylvania Department of Transportation records which revealed Pennsylvania driver license number 18571368 had been issued to MICHAEL MORAN. The address reflected on this license is 6447 Library Road, Apt 2, South Park, PA 15129.

20. On September 24, 2018, your affiant sent a request to the United States Postal Inspector for information relating to the persons receiving mail at 6447 Library Road, Apartment 2, South Park, PA 15129. On September 24, 2018, the U.S. Postal Inspector informed Your Affiant that MICHAEL MORAN is receiving mail at this address.

21. On September 28, 2018, Detective Dish received another NCMEC CyberTip, Tip number 39733942. The CyberTip reports that on September 4, 2018, SmugMug/Flickr reported that three images of child pornography were uploaded to www.flickr.com. SmugMug/Flickr reported that name, MICHAEL MORAN, phone number 412-580-4802, email address michaelmoran6447@comcast.net, Screen/User name 143587696@N02, IP address 174.229.11.94, upload date/time, August 23, 2018, 4:53:50 UTC. A public search of the IP address 174.229.11.94 indicates that the IP address was issued by Verizon Wireless, Bedminster, NJ

22. A description of two of the images uploaded are described as follows:

A. FILENAME: img.396-1.jpg

B. DESCRIPTION: This image involves an approximately five-year-old male wearing a striped shirt and nude from the waist down. The minor is sitting in a bath of water exposing his penis to the camera.

C. FILENAME: img.419-1.jpg

D. DESCRIPTION: This image involves an approximately three-year-old male laying on his back totally nude. The child's legs are being held apart by an adult exposing his penis.

23. On September 28, 2018, an administrative subpoena was issued by the FBI to Verizon Wireless for IP address 174.229.11.94. The results received on October 11, 2018 indicate that the person holding the IP address on September 4, 2018, was MICHAEL MORAN, Subscriber address 6447 Library Road, Apartment 2, South Park, PA 15129, telephone number 412-580-4802, Verizon account number 8993208800219553, Verizon account status is active and the email address associated with the Verizon account is michaelmoran6447@comcast.net.

24. Also on September 28, 2018, another administrative subpoena was issued by the FBI to Verizon Wireless for the cellular telephone number 412-580-4802. The results were received on October 1, 2018, indicating that the person holding the telephone number was MICHAEL MORAN.

25. On October 19th, your affiant obtained a federal search warrant to search MICHAEL MORAN's residence, located at 6447 Library Road, Apartment 2, South Park, PA 15129. The probable cause for the search warrant was obtained from the uploading of more than 200 images of child pornography to SmugMug/Flickr online storage account, Screen name 141788631@N08, email address.

26. On October 24, 2018, the Western Pennsylvania Violent Crimes Against Children Task Force executed a search warrant at the home of MICHAEL MORAN for the possible possession of child pornography images and videos.

27. During the execution of the search warrant, MORAN agreed to answer questions regarding the above mentioned Flickr accounts. MORAN explained that a few months prior to the execution of the warrant MORAN'S Flickr account was locked by Flickr. MORAN explained to law enforcement that he has been storing images of child pornography on his Flickr account. MORAN suspected the account was locked because of the content stored in the account. MORAN explained he then created another Flickr account. Initially MORAN said he only kept legal images of children on the account. MORAN then explained that as time went on he again started saving contraband images of children to this second Flickr account.

28. Upon completion of the search warrant a forensic review was initiated on the electronic devices seized from MORAN'S home. Numerous images of child pornography were found on several electronic devices. Law enforcement is now requesting that the account information and content contained in the two Flickr/SmugMug accounts 141788631@N08 and 143587696@N02 be produced to law enforcement.

INFORMATION TO BE SEARCHED AND THINGS TO BE SEIZED

29. I anticipate executing this warrant under the Electronic Communications Privacy Act, in particular 18 U.S.C. §§ 2703(a), 2703(b)(1)(A) and 2703(c)(1)(A), by using the warrant to require SmugMug/Flickr to disclose to the government copies of the records and other information (including the content of communications) particularly described in Section I of Attachment B. Upon receipt of the information described in Section I of Attachment B, government-authorized persons will review that information to locate the items described in Section II of Attachment B.


CONCLUSION

30. Based on the foregoing, I request that the Court issue the proposed search warrant.

REQUEST FOR SEALING

31. I further request that the Court order that all papers in support of this application, including the affidavit and search warrant, be sealed until further order of the Court. These documents discuss an ongoing criminal investigation that is neither public nor known to all of the targets of the investigation. Accordingly, there is good cause to seal these documents because their premature disclosure may seriously jeopardize that investigation.

32. The above information is true and correct to the best of my knowledge, information and belief.



GREGG FRANKHOUSER
Special Agent
Federal Bureau of Investigation

Subscribed and sworn to before me
This 14th day of November, 2018.



THE HONORABLE LISA PUPO LENIHAN
United States Magistrate Judge

ATTACHMENT A

Property to Be Searched

This warrant applies to any and all information and records associated with the SmugMug Flickr accounts belonging to Flickr screen name or username 141788631@N08, and Flickr screen name or username 143587696@N02.

The information described above is stored at a premises owned, maintained, controlled, or operated by SmugMug, a company headquartered at 67 E. Evelyn Avenue, Suite 200, Mountain View, CA 94041.

ATTACHMENT B

ITEMS TO BE SEARCHED FOR AND SEIZED

I. The following information is to be disclosed by SmugMug to law enforcement:

To the extent that the information described in Attachment A is within the possession, custody, or control of SmugMug, regardless of whether such information is located within or outside of the United States, and including any messages, records, files, logs, or information that has been deleted but is still available to SmugMug, or has been preserved pursuant to a request made under 18 U.S.C. § 2703(f), SmugMug is required to disclose the following information to the government for each account or identifier listed in Attachment A, for the time period from account origination to the present:

1. All records or other information regarding the identification of the accounts, to include full name, physical address, telephone numbers, user names or screen names, date of birth, and other identifiers, records of session times and durations, the dates on which the accounts were created, the length of service, the IP address used to register the accounts, log-in IP addresses associated with session times and dates, account status, e-mail addresses provided during registration, methods of connecting, log files, and means and source of payment (including any credit or bank account number);
2. The types of service utilized by the user, including websites and apps used;
3. All privacy settings and other account settings;
4. All Flickr mail and comments associated with the accounts;
5. All communications and messages made or received by the user to include e-mails (read, sent, deleted, draft, and unopened) whether in a mailbox, user created folders, or other storage locations, attachments, documents, graphics, and any other uploaded, saved, or associated files;

6. All content in the user's Flickr online storage along with any settings on who has access to the files or folders and dates, times, and IP address of when the files were uploaded;

7. All content in the user's Flickr storage and backup files;

8. All activity logs and IP logs, including all records of the IP addresses that logged into the accounts;

9. All records or other information stored by an individual using the accounts, including:

a. All email and available instant messaging stored and presently contained in, or on behalf of, the accounts;

b. All existing printouts from original storage of email or instant messages associated with the accounts;

c. All transactional activity of the email addresses or accounts, including log files, IP connectivity logs, dates, times, methods of connecting, ports, dial-ups, and/or locations;

d. All other electronic data including but not limited to images, videos, files, including dates and times such images, videos, and files were uploaded to the accounts;

e. All device information, including information from or about the computers, phones, or other devices where SmugMug Flickr services were installed or accessed, such as the operating system, hardware version, device settings or file and software names and types, device identifiers;

10. All records pertaining to communications between SmugMug or Flickr and any person regarding the accounts, including contacts with support services and records of actions taken.

The Provider is hereby ordered to disclose the above information to the government within 14 days of service of this warrant.

II. Information to be seized by the government:

All information described above in Section I that constitutes fruits, evidence and instrumentalities of violations of Title 18 United States Code Sections 2252 and 2251 involving MICHAEL MORAN, including, for each account or identifier listed on Attachment A, information pertaining to the following matters:

1. All visual depictions of minors engaged in sexually explicit conduct produced using minors engaged in such conduct.
2. All electronic documents, files, images and communications, in whatever form, pertaining to the possession, receipt, access to or distribution of child pornography or visual depictions of minors engaged in sexually explicit conduct, or pertaining to an interest in child pornography or minors, or which tends to show the knowing possession of any child pornography possessed.
3. All electronic files, images, documents and communications suggesting a sexual interest in minor children.
4. All records, documents, and images which evidence operation or ownership or use of the subject Flickr accounts, including the identity of the owner and/or user.